

ENHANCING THE POWERS OF WAFAQI MOHTASIB

The office of Wafaqi Mohtasib (Ombudsman) was established in 1983 by the President Order I of 1983. The main functions entrusted to Wafaqi Mohtasib were to diagnose, investigate, redress and to rectify any injustice done to public through mal-administration of an agency of the Federal Government. By this order a speedy, and inexpensive mode of removal of grievances against the state was provided to the public. The Mohtasib was given vast jurisdiction to investigate into the affairs of all the offices of the Federal Government, except the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court and the High Courts. He could investigate any complaint, except in respect of matters which are sub judice or which relates to external affairs or the Armed Forces. The Supreme Court of Pakistan (PLD 1989 SC 109) appreciated this extended jurisdiction of the Wafaqi Mohtasib in redressing public grievances caused due to maladministration of an agency of the Federal Government and observed that this institution is the most appropriate forum for the purpose.

The Pakistan Law Commission in its meeting held on December 26 - 31, 1992 reviewed the organisational framework of the Wafaqi Mohtasib as well as his powers of execution/implementation of his orders/decisions. The Commission noticed certain deficiencies in the working of this office which need to be cured. The deficiencies are:

- (a) The definition of the term 'agency' given under Article 2(1) appears to be too narrow, hence, should be made more comprehensive;
- (b) There are no qualifications prescribed for appointment to the office of Wafaqi Mohtasib. Appropriate qualifications for the post may, therefore, be provided;
- (c) Currently Wafaqi Mohtasib is confronted with the problem of executing his orders/decisions. His powers in this respect be enhanced. He should be empowered to offer effective redressal of grievances before laying a special report to this effect before the President, as required under Article (1) of the Order.

The definition of term 'Agency' as given in Article 2(1) of the President Order I of 1983 does not expressly include a body, authority or organisation, not directly controlled by the Federal Government. Therefore, a subsidiary or associated company or a holding company established by the Government, escapes the jurisdiction of Wafaqi Mohtasib. The Pakistan Law Commission takes the view that all institutions, controlled by the Federal Government must fall within the jurisdiction of the Wafaqi Mohtasib. Therefore, the Commission recommends amendment of the term 'Agency' by inserting the words 'directly or indirectly' after the word 'controlled' as given in Article 2(1) of the Order.

There are no prescribed qualifications for the office of Wafaqi Mohtasib. Therefore, the President may appoint any person as Wafaqi Mohtasib under Article 3(1) of the P.O. I of 1983. In actual practice, however, retired or serving Judges of Supreme Court have been appointed to the office. The Commission takes the view that in the absence of clear and express provisions as to qualifications of Wafaqi Mohtasib, it is possible that a serving or retired Chief Justice of the Supreme Court is appointed to the post. This, the Commission considers, is undesirable and is against judicial propriety. Besides, in the absence of appropriate qualifications for the office of Wafaqi Mohtasib, the post may be used as refuge for undesirable personnel in the service or as temptation for selfish personnel nearing retirement age. The Commission, therefore, recommends that Article 3(1) of the President Order I of 1983 may be amended to expressly provide for appointment to the office of Wafaqi Mohtasib from persons who are or have been a Judge of the Supreme Court of Pakistan, excluding its Chief Justice. Reports speak of problems being faced by the Wafaqi Mohtasib in getting his orders/decisions implemented. Under Article 11 of the President Order I of 1983, the Wafaqi Mohtasib cannot implement his findings by his own order. He is required to communicate these to the agency concerned for taking action on the lines recommended by him. In case the agency does not comply with his recommendations and it appears to him that the injustice is not likely to be remedied, may lay a special report to this effect before the President for seeking implementation of his orders. The Commission views this anomaly with concern. Wafaqi Mohtasib should not be helpless to redress a grievance when he reaches the conclusion that it was unjustified and should be corrected. Such a situation will undoubtedly shake public confidence in the institution of the Wafaqi Mohtasib and lead to piling of complaints and grievances against the government. This state of affairs, the Commission observed, is undesirable and needs to be remedied. The

Commission, therefore, recommends that the Wafaqi Mohtasib be empowered to pass appropriate order for seeking execution of his orders before placing a special report to this effect before the President.

The Commission further recommends that the Provincial Government of Sind where the office of Provincial Mohtasib has been established may also adopt these recommendations.

ESTABLISHMENT OF THE OFFICE OF WAFAQI MOHTASIB (OMBUDSMAN) (AMENDMENT) ACT, 1993

An Act further to amend the Establishment of Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983.

Whereas it is expedient further to amend the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 for the purpose hereinafter appearing;

It is hereby enacted as follows:

- 1. Short title and commencement.- (1) This Act may be called Establishment of the Office of Wafaqi Mohtasib (Ombudsman) (Amendment) Act, 1993.
(2) It shall come into force at once.**
- 2. Amendment in Article 2 of P.O.I of 1983.- In the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, hereinafter called the said Order, in Article 2, in sub-clause (1) after the word 'controlled' the commas and the words ",directly or indirectly," shall be inserted.**
- 3. Amendment in Article 3 of the P.O.I of 1983.- In the said Order, in Article 3, in clause (1), after the word 'President' the comma and the words "and who is or has been a Judge of the Supreme Court excluding the Chief Justice" shall be inserted.**
- 4. Amendment in Article 11, P.O.I of 1983.- In the said Order, in Article 11, in clause (4), after the word and comma 'fit' the words "redress the injustice by an order as he may deem fit and" shall be inserted.**

STATEMENT OF OBJECTS AND REASONS

These recommendations of the Pakistan Law Commission seek to amend the P.O.I of 1983 to empower the Wafaqi Mohtasib to give effective redress to aggrieved persons in cases where he feels that injustice will not be remedied and to specify the qualifications of appointment of Wafaqi Mohtasib.